IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA

CIVIL REVISION APPLICATION NO. 26 OF 2004

The New India Assurance Co. Ltd.
Velho Building, 3rd Floor,
Municipal Garden Square,
Panaji-Goa. .... Petitioner

Versus

1. Mr. Veerapa Naidu, s/o G. Basavaiah
   Village Vasili, Atmakur Mandal,
   Nellore District, Andhra Pradesh,
   C/o Adv. Smt. Ranjana Salgaocar
   D-2 Phenix Plaza, Feira-Alta
   Mapusa-Goa.

2. Mrs. Ganga Padmamma, w/o Veerap Naidu
   Village Vasili, Atmakur Mandal,
   Nellore District, Andhra Pradesh,
   C/o Adv. Smt. Ranjana Salgaocar
   D-2 Phenix Plaza, Feira-Alta
   Mapusa-Goa.

3. Shri Somshekhar, s/o Basappa Driver,
   C/o South East Construction Co;
   Cansca-Tivim, Bardez-Goa.

4. South East Construction Co.
   Having its Head Office at Flat 1A
   Aarti Apartment, 105-Habibulla Road,
   T. Nagar, Chenai, 600017,
   Represented by its managing partner
   M. Padmaiah, having his work office at
   C/o Atmaram Kanolkar (Tatoji), Canca,
   Tivim, Bardez-Goa. .... Respondents.

Shri E. Afonso, Advocate for the Petitioner.

Shri S.G. Bhobe, Advocate for Respondents No. 1 & 2.

CORAM : **P.V. KAKADE, J.**

DATE : **14th NOVEMBER, 2006**

ORAL JUDGMENT :

Heard both sides. Perused the record.

2. This is an revision petition filed by the Insurance Company aimed against the order passed by the Motor Accident Claims Tribunal, Mapusa in Claim Petition No. 48 of 1997, holding that the respondents including the present revision petitioner, would be jointly and severally liable to pay to the claimants a sum of Rs. 12,85,000/- within a particular period alongwith interest at the rate of 12% p.a. The amount is already deposited in the Court.

3. It may be noted that the earlier appeal was preferred by the present petitioner against the judgment and award passed by the tribunal. However, by order dated 11/10/2004, Division Bench of this Court held, on the basis of Apex Court ruling, in the case of ***National Insurance Company Limited Versus Nicolletta Rohtagi & Ors.*** **(2002) 7 SCC 456,** to the effect

that an insurer has the right to file an appeal before the High Court on limited grounds available under Section 149(2) and the appeal being product of the statute, it is not open to the insurer to take any plea other than those provided under Section 149(2) of the said Act. In view of this ratio, it was held that the appeal filed by the Insurance Company could not be entertained. However, Division Bench gave liberty to the Insurance Company to file the present revision petition under Section 115 of the Civil Procedure Code and, hence, the present revision petition.

4. The claim petition under Section 166 of the Motor Vehicles Act came to be filed by the parents of the deceased Ganga Raghu Babhu Naidu for compensation on account of death of the deceased, in the accident which took place on 30/03/1997. It was alleged in the said petition that their son Ganga Raghu Babhu Naidu, who was the engineer, was working as a consulting engineer for respondent no.2 and drew monthly salary of Rs. 5,000/-. He was 23 years of age and was of sound health. It was also alleged that the deceased was busy carrying on his duty looking in other direction when the truck suddenly came in reverse direction and hit on his back causing head injury to his skull, as a result of which accident occurred and he died.

5. The present petitioner who was the respondent no. 3 in the claim petition, challenged the veracity of the statements made in the petition and submitted that the deceased was not of the age of 23 years. The present petitioner also challenged the ages of applicants and denied that deceased was earning Rs. 5,000/- per month.

6. The learned member of the tribunal after hearing both the parties and on the basis of available evidence on record, came to the conclusion that the claimants had proved that the deceased was of 23 years of age and was earning Rs. 5,000/- per month towards salary. It was further held that claimants were of the age of 53 years and 40 years respectively and, therefore, taking the life expectancy of the deceased as 60 years, it was held that he would have contributed his earnings for another 36 years and that could be the amount of Rs. 21,60,000/-. Therefore, taking into account, other relevant aspects such as uncertainties of life, for which deduction of 20% was made which brought the earnings down to Rs. 19,28,000/- and out of which one third was deducted towards personal living expenses of the deceased, if alive and, hence, the total quantum of compensation was fixed at Rs. 12,85,000/- and an award came to be passed in that regard with direction to pay interest thereon at the rate of 12% p.a.

from the date of the application .

7. The only sustainable challenge to the award spelt out on behalf of the revision petitioner is to the effect that the learned member of the tribunal has not fixed the compensation amount on the basis of use of multiplier, in order to come to the conclusion of payment of compensation. In support of his submission, the Counsel for the petitioner put reliance on several judgments of the Apex Court. In the case of ***General Manager, Kerala State Road Transport Corporation, Trivandrum*** **Versus** ***Susamma Thomas (Mrs.) and Ors.*****(1994) 2 SCC 176**, the Apex Court observed that multiplier method is logically sound and legally well-established. The statutory determination of a 'just' compensation would unshackle the exercise from any rigid formula. It must be borne in mind that the multiplier method is the accepted method of ensuring a 'just' compensation which will make uniformity and certainty of the awards. The Apex Court further disapproved these decisions of the High Courts which were involved in that case taking contrary view and further indicated that the multiplier method is the appropriate method, a departure from which can only be justified in rare and extraordinary circumstances and very exceptional cases. This principle was reiterated in another ruling of the

Apex Court in the case of ***U.P. State Road Transport Corporation And Ors.*** **Versus** ***Trilok Chandra & Ors.*** **(1996) 4 SCC 362.**

8. In other words, there is no doubt whatsoever that the multiplier method is the just and scientific way of determining the quantum of compensation. This is especially so when there is nothing on record to indicate that the departure from adopting such method was justified due to rare and extraordinary circumstances involved in this case. Therefore, I am of the view that the revision petitioner in this case is justified in submitting that award is bad in law to the extent that it has not adopted the multiplier method while determining the quantum of compensation and to that extent I totally agree with the learned Counsel for the revision petitioner.

9. Now, the question is, what would be the proper multiplier to be adopted in the present set of facts and circumstances. It was submitted on behalf of the petitioner that the claimant who was the father of the deceased was of the age of 53, while there is no evidence to show the age of the mother. However, the learned Counsel for the respondents pointed out the suggestions given on behalf of the petitioner to the claimants' witness to the effect which would show that the age of the mother of the deceased was

around 40 years. However, there is also no indication from the records to fix the age of the mother precisely at 40. However, it is needless to mention that circumstances on record would show two aspects, firstly, that the mother of the deceased was younger than father that is to say that she was definitely below 53 years of age. Secondly, in all probabilities, taking into account ages of all the other children, she was in the age bracket of around 45 years of age. Therefore, if we take into account the ages of claimants at 54 years and 45 years approximately, the multiplier would be assessed then, while determining the quantum of compensation that aspect will have to be taken into account as one of the relevant aspects. In this regard, the learned Counsel for the petitioner submitted that it was established position that multiplier would be determined on the basis of ages of the claimants, if such age was higher than the age of the deceased. No doubt that this position prevails, however, there is no hard and fast rule to hold that only the ages of the claimants would be the determining factor of the multiplier rules without taking into account the other relevant circumstances. In the present case it is evident that the deceased was 23 years of age and his earnings were Rs. 5,000/- per month. This aspect alongwith the aspect of the ages of the claimants and the fact of future prospects of the deceased as well as uncertainties of life etc. are to be taken

into account and under these circumstances, after giving latitude to these aspects, I am of the view that multiplier of 18 could be appropriate multiplier to be adopted in the present case. No doubt that 20% deduction for uncertainties of life are to be taken into account alongwith deduction of 1/3rd towards personal living expenses of the deceased, if alive, are required to be noted. In view of this position, I hold that the amount of compensation is to be determined by applying the multiplier of 18 on the basis of income of the deceased to be reckoned at Rs. 5,000/- per month. Thereafter, deduction of 20% to be made for uncertainties of life and further deduction of 1/3rd amount therefrom for living expenses of the deceased, if alive.

10. The learned Counsel for the petitioner then raised the question of rate of interest to be awarded. The tribunal has awarded 12% p. a. on the compensation amount from the date of the application till actual payment. The learned Counsel brought to my notice that rulings of the Apex Court has indicated that rate of interest should be on par with the prevalent interest of the banks at the relevant time. In this regard, I am not inclined to interfere with the rate of interest awarded by the member of the tribunal as it was fixed at 12% p.a. on the basis of then prevalent interest

rate in banking institutions.

11. With these directions, the revision petition is partly allowed. The order of the tribunal is hereby set aside and modified to the effect that the respondents shall jointly and severally pay to the claimants a sum of Rs. 5,76,000/- with interest at the rate of 12% p.a. from the date of the application till actual payment. The decreetal amount is already deposited by the revision petitioner in the Court. The present amount to be paid to the claimants from the said amount giving further adjustment for the amount of Rs. 50,000/- which was already deposited for no fault liability, and remaining amount shall be refunded to the revision petitioner.

P.V. KAKADE, J.

NH